

# April 2005

## Update: Juvenile Justice Benchbook (Revised Edition)

### CHAPTER 10

#### Juvenile Dispositions

##### 10.13\* Restitution

###### E. Persons or Entities Entitled to Restitution

Insert the following text before the paragraph beginning “**Individuals or entities that have provided services . . .**” on page 239:

In *People v Byard*, \_\_\_ Mich App \_\_\_, \_\_\_ (2005), the trial court ordered the defendant to pay full restitution to the victim’s insurance company, Allstate Insurance, in the amount of \$659,128.09. On appeal, the defendant argued that because Allstate was reimbursed by the Michigan Catastrophic Claims Association (MCCA) for all of its losses over \$250,000.00, Allstate was only entitled to \$250,000.00. Although the MCCA did not file a claim to receive restitution, the Court amended the restitution order to provide \$250,000.00 to Allstate, and the remaining \$409,128.09 directly to the MCCA.

\*Renumbered  
by January  
2005 update to  
page 231.

\*Renumbered  
by January  
2005 update to  
page 231.

## 10.13\* Restitution

### I. Calculating Restitution Where the Offense Results in Physical or Psychological Injury, Serious Bodily Impairment, or Death

#### Triple restitution for serious bodily impairment or death of a victim.

Insert the following text after the August 2004 update to this subsection:

A court may order up to triple the amount of any other restitution allowed under the CVRA, including restitution payable to insurance companies that have compensated the direct victim for losses incurred as a result of the offense. *People v Byard*, \_\_\_ Mich App \_\_\_ (2005). In *Byard*, the defendant was convicted of operating a motor vehicle while visibly impaired causing serious injury. It was undisputed that the victim suffered a serious impairment of body function. Defendant was ordered to pay \$659,128.09 to an insurance company and \$280,000.00 to the direct victim of the offense, \$250,000.00 of which was for “pain and suffering under MCL 780.766(5).” The Court of Appeals upheld the restitution order, stating:

“Defendant says that, because the victim did not suffer any out-of-pocket expenses, no restitution was ‘otherwise allowed under this section.’ MCL 780.766(5). However, the trial court ordered defendant to pay \$659,128.09 to Allstate Insurance Company for medical expenses and lost wages paid for the victim. MCL 780.766(4)(a) & (c) allows a court to award restitution for medical bills and lost wages. MCL 780.766(8) allows courts to award restitution to any person, government entity, or business or legal entity which compensates the victim for losses arising out of a defendant’s criminal conduct. Therefore, the award of restitution to Allstate was restitution ‘otherwise allowed under this section,’ and the \$659,128.09 award could potentially be tripled under MCL 780.766(5). Thus, the trial court did not err when it awarded \$250,000 to the victim under MCL 780.766(5).”

## CHAPTER 11

### Paying the Costs of Juvenile Proceedings

#### 11.1 County, State, and Federal Sources of Funding

On page 265, before the last paragraph, insert the following text:

The 50% FIA reimbursement of annual expenses does not include reimbursement for counties' capital expenditures. *Ottawa County v Family Independence Agency*, \_\_\_ Mich App \_\_\_, \_\_\_ (2005). In *Ottawa County*, eleven Michigan counties filed suit seeking reimbursement from the FIA for capital expenditures that included building, equipping, or improving juvenile detention facilities. The Court of Appeals concluded that reimbursement of a county's expenditure is conditioned upon meeting several requirements, including compliance with FIA's administrative rules and enabling statute and FIA's policies. Moreover, the Court noted that FIA is required to develop a system of reporting expenditures that only allows reimbursement "based on care given to a specific, individual child." MCL 400.117a(8). Relevant administrative rules and policies allow reimbursement of expenses necessary to provide direct services to children but severely limit reimbursement of capital expenditures because such expenditures are not attributable to the care of individual children. The Court of Appeals also concluded that FIA's failure to reimburse the counties for their capital expenditures did not violate the Headlee Amendment, Const 1963, art 9, §29. *Ottawa County, supra* at \_\_\_.